

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

<p>GIZACHEW WONDIE, a single man Plaintiff, v. KING COUNTY, a political subdivision of the State of Washington; KING COUNTY SHERIFF'S OFFICE, an entity of King County; KATHLEEN DECKER, in her official and individual capacities; GEORGE ALVAREZ, in his official and individual capacities; and JOHN / JANE DOE OFFICERS 1-10, in their official and individual capacities, Defendants.</p>	<p>NO. 2:21-cv-1623 SECOND AMENDED COMPLAINT JURY TRIAL DEMANDED</p>
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COMES NOW the plaintiff, by and through his attorney of record, **DAN N. FIORITO III**, and alleges as follows:

## I. INTRODUCTION

1       1.1    This cause of action arises pursuant to 42 U.S.C. §1983 and §1988 from the  
2 conduct against GIZACHEW WONDIE (“Mr. Wondie” or “Plaintiff”) by Kathleen Decker  
3 (“Detective Decker”), and King County on December 6, 2018, that violated his Fourth Amendment  
4 rights. Mr. Wondie was arrested without probable cause and he was subjected to an unlawful  
5 search based on judicial deception. King County’s ratification of the actions outlined in this  
6 Amended Complaint demonstrate the existence of policies or customs that promote or allow for:  
7 (1) judicial deception; (2) the misuse of ballistics evidence by its’ detectives to obtain probable  
8 cause; and (3) the use of SWAT resources to make unlawful arrests engineered to coerce  
9 confessions. King County maintained a widespread practice and custom of misusing NIBIN  
10 evidence so closely related to the deprivation of the plaintiff’s rights as to be the moving force that  
11 caused Mr. Wondie to be unlawfully seized and federally prosecuted.

12       1.2    The publicly available record in cause number CR18-315 (“criminal case”)  
13 indicates Mr. Wondie’s rights were violated when Detective Decker provided testimony in her  
14 affidavit for a search warrant of Mr. Wondie’s residence and person that demonstrated a deliberate  
15 falsehood or reckless disregard for the truth. Absent the material misrepresentations presented in  
16 her affidavit, the warrant would not have issued. Mr. Wondie’s rights were further violated when  
17 Mr. Wondie was arrested without probable cause by SWAT team members at the request of  
18 Detective Decker to assist with the execution of the search warrant.

19       1.3    King County Major Crimes Unit (“MCU”) Sheriff Detective Kathleen Decker was  
20 the lead investigator of the unsolved homicide of Amarah Riley. She authored a search warrant to  
21 search the person and residence of Mr. Wondie for a firearm she believed was involved in the  
22 homicide. The search warrant was executed after judicial approval of the search warrant

1 application prepared by Detective Decker. To serve the warrant, Detective Decker asked for, and  
2 received, King County Special Weapons and Tactics (“SWAT”) assistance. By her own admission  
3 at a pre-trial motion hearing, Detective Decker did not have probable cause to arrest Mr. Wondie.  
4 SWAT’s only justification for detaining Mr. Wondie was to execute the search warrant. Mr.  
5 Wondie was seized by SWAT officers and Major Crimes Unit Task Force (MCUTF) officers  
6 outside of Seattle Central Community College. After the seizure, Mr. Alvarez allegedly observed  
7 illicit narcotics on Mr. Wondie’s person. Upon a search of his person and vehicle, he was arrested  
8 for drug possession.

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10 1.4 After his unlawful seizure and arrest by SWAT, Mr. Wondie was taken into custody  
11 and questioned by Detective Decker and King County Detective John Free at the King County  
12 Administration Building. Mr. Wondie was subsequently indicted in the criminal case based on  
13 information gathered subsequent to his unlawful seizure and arrest and prosecuted for nearly three  
14 years losing his business and having to drop out of college.

15  
16 1.5 During pre-trial proceedings in the criminal case, Mr. Wondie brought motions to  
17 suppress evidence acquired from the warrantless search of his person and property. Also, Mr.  
18 Wondie brought a *Franks* Motion alleging that the search warrant authored by Detective Decker  
19 included allegations of deliberate falsehood and / or of reckless disregard for the truth. According  
20 to transcripts from the criminal proceeding, Detective Decker wrote in her supporting affidavit  
21 that: (1) forensic evidence conclusively established that shell casings from the murder scene she  
22 was investigating matched with a gun owned by Mr. Wondie; (2) Mr. Wondie was pictured holding  
23 a semi-automatic weapon in a social media post made by an alleged Somalian gang with potential  
24 involvement in the Riley homicide investigation; and (3) Mr. Wondie had a propensity for  
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1 violence. All three of these statements were demonstrably false or otherwise submitted without  
2 any factual basis at the time they were made by Detective Decker.

3 1.6 The Court granted Mr. Wondie's *Franks* Motion and motion to suppress evidence  
4 pursuant to a warrantless search. All charges in the criminal matter against Mr. Wondie were  
5 dismissed with prejudice.  
6

7 1.7 All the substantive pleadings, exhibits and orders related to the *Franks* Motion and  
8 the motion to suppress were filed under seal. Mr. Wondie had no access to these materials at the  
9 time he filed his initial Complaint and moved to have them unsealed. The Court ruled on Mr.  
10 Wondie's motion to unseal on December 2, 2021, granting in part his motion. The Court's Orders  
11 have since been made available to the public.  
12

13 1.8 Mr. Wondie will continue to seek access to the sealed materials so that he can  
14 pursue his claims against the defendants.  
15

## **II. JURISDICTION AND VENUE**

16 2.1 This Court has jurisdiction over these matters by virtue of 28 U.S.C. 1331, 1343(3)  
17 & (4), and 1367.  
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19 2.2 Venue properly lies in this Court pursuant to 28 U.S.C. 1391.  
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## **III. THE PARTIES**

21 3.1. At all times relevant hereto, Mr. Wondie was a single man residing in Seattle,  
22 Washington which is located in King County, Washington.  
23

24 3.2. Defendant King County was and is at all times material hereto a political  
25 subdivision of the state of Washington. Among other things, the County provides law enforcement  
26 services through its Sheriff's Department ("King County Sheriff's Office" or "KCSO"). KCSO  
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is and was at all times material hereto a county agency, providing the vehicle through which King County fulfills its policing function.

3.3. At all times material hereto, Detective Decker was an employee of King County and acted as an agent for KCSO as a detective and was acting in her individual capacity and within her scope of employment and under color of state law at all times relevant herein. At the time of Mr. Wondie's arrest, Deputy Decker had been with KCSO in a law enforcement capacity for thirty-three years. At the time of the events alleged in the Complaint, Detective Decker had been a detective for seventeen years.

3.4. George Alvarez has been dismissed from the lawsuit. He was terminated from KCSO and is no longer employed by King County.

#### **IV. FACTUAL ALLEGATIONS**

**Detective Decker believed Mr. Wondie had possession of the firearm that killed Amarah Riley and investigated him for murder.**

4.1 Detective Decker found a shell casing at the scene of where a young woman named Amarah Riley had been murdered. She submitted the casing to the Washington State Patrol Crime Lab (“WSP Lab”). The casing was run through the National Integrated Ballistic Integration Network (“NIBIN”) which is maintained by the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”).

4.2 NIBIN is broadly used to describe the entire automated process for acquisition, storage, comparison, and review of potentially matching digital images of cartridge cases and bullets.

1           4.3     Law enforcement, including KCSO, uses NIBIN leads for investigative purposes.

2     *See Appendix A for materials that explain NIBIN in detail, incorporated by reference to this*  
3     *Second Amended Complaint.*

4           4.4     Using NIBIN in conjunction with firearms examiners, it is possible to determine if  
5     the shell casing found at a crime scene links to a particular gun that has been test fired. Cartridge  
6     cases or bullets fired under controlled conditions from a firearm recovered by law enforcement are  
7     referred to as Test-Fires. These test-fired cartridge cases or bullets thus bear the unique markings  
8     left on them by that recovered firearm. These cartridge cases or bullets, in essence, bear the  
9     firearm's "mechanical fingerprint." Their digital images are acquired into NIBIN and compared to  
10    images of cartridge case or bullet evidence found at prior crime scenes to help determine whether  
11    the recovered firearm may have fired the shots at those crime scenes.

14           4.5     A NIBIN "Lead" is the information given to law enforcement investigators  
15    indicating that the same firearm likely fired particular cartridge cases recovered at one or more  
16    crime scenes. This lead is based on a correlation review technician finding likely matches after  
17    reviewing acquisitions on MATCHPOINT, and at least one and sometimes two other technicians  
18    or firearm examiners visually confirming a likely match on MATCHPOINT. MATCHPOINT is  
19    the computer station that projects side-by-side cartridge case or bullet acquisitions on a screen for  
20    visual comparison by correlation review technicians and firearm examiners.

23           4.6     A NIBIN "Lead" is not based on microscopic examination by a firearm examiner.

24           4.7     A NIBIN Lead does not rise to the level of a forensic match.

1       4.8     A NIBIN “Hit” is the information given to law enforcement investigators indicating  
2 a firearm examiner has concluded, after examination under a comparison microscope, that the  
3 same firearm fired particular cartridge cases or bullets recovered at one or more crime scenes.

4       4.9     It is impossible to represent truthfully and accurately based on a NIBIN lead alone  
5 without microscopic confirmation the existence of a forensic match.  
6

7       4.10    There is no basis to assert that a NIBIN lead can be used as evidence of a forensic  
8 match for purposes of establishing probable cause in a search warrant absent microscopic  
9 confirmation.  
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11      4.11    A lead resulting from a NIBIN query is distinguishable from confirmation that a  
12 shell casing is related to particular firearm. A confirmation is also referred to as a match or a hit.  
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14      4.12    Detective Decker received an email indicating the shells from the Riley murder  
15 scene appeared to correspond with a shell fired from a gun she determined had been previously  
16 owned by Mr. Wondie. Based on this information, her investigation turned to Mr. Wondie.  
17

18      4.13    Under forensic protocols, a firearms examiner must perform a microscopic  
19 confirmation of any casings before NIBIN leads can be used for warrants, arrests, or at trial, and a  
20 formal report must be requested.  
21

22      4.14    Prior to applying for the search warrant, Detective Decker had been provided with  
23 information that “NIBIN is a screening tool. What you need is to have the lead confirmed by the  
24 WSP Crime Lab.”  
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26      4.15    Detective Decker was on notice of the limitations on the use of NIBIN leads.  
27 NIBIN leads instruct the reader that NIBIN leads cannot be used for the establishment of probable  
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1 cause or for any court-related purpose until evidence has been confirmed by a microscopic  
2 comparison.

3       4.16 Detective Decker never sought microscopic verification that the shell casing she  
4 submitted to NIBIN matched a gun previously owned by Mr. Wondie.

5       4.17 NIBIN queries can result in false positive results and microscopic analysis is  
6 necessary to eliminate the potential for a false positive. Hence, a NIBIN lead itself is not a match.  
7 Additional microscopic testing must be performed before a detective can represent confirmation  
8 exists conclusively that a bullet came from a particular firearm.

9       4.18 In her affidavit supporting the search warrant, Detective Decker testified that “the  
10 test results link conclusively the shell casings collected from the Amarah Riley murder scene on  
11 September 19, 2018, and the Gizachew Wondie Smith and Wesson .40 caliber firearm described  
12 above.” Detective Decker also testified in her affidavit that “Forensic examination has established  
13 that shell casings recovered from the scene matched a gun known to be owned by Gizachew  
14 Wondie.” Both statements are demonstrably false.

15       4.19 Detective Decker was specifically advised by Washington State Patrol Analyst  
16 Samuel Gonzalez that if she wanted to use a NIBIN lead for an arrest or warrant, she needed to  
17 contact the Washington State Patrol Crime Lab for a report. These notifications on the use of  
18 NIBIN evidence without lab confirmation were provided to Detective Decker on multiple  
19 occasions.

20       4.20 It is undisputable that Detective Decker misrepresented the evidentiary value of the  
21 NIBIN lead in her affidavit and used it inappropriately in violation of forensic protocols. This was  
22 the primary evidence Detective Decker used to link Mr. Wondie to the gun she believed was used  
23

1 to kill Ms. Riley. Absent this assertion, there would be no basis to establish the probable cause  
2 Detective Decker was seeking.

3 **Detective Decker attempted to tie Mr. Wondie to gang violence without a factual basis.**

4 4.21 Detective Decker believed that an individual that employed Ms. Riley may have  
5 been involved in Ms. Riley's death and that gang violence may have played a part in her death.  
6

7 4.22 Prior to applying for the warrant, Detective Decker began looking at social media  
8 accounts of potential gangs that she believed may have been related to the homicide case. She  
9 looked at social media posts of a Somalian music group ("Group A") that law enforcement  
10 suspected had gang involvement.  
11

12 4.23 Detective Decker asked a federal agent familiar with Group A if he had ever heard  
13 of Gizachew Wondie. The agent indicated he had never heard the name.  
14

15 4.24 Detective Decker also received an organizational chart of Group A from SPD. Mr.  
16 Wondie was not on the organizational chart. Three different SPD officers indicated they did not  
17 know of any association between Mr. Wondie and Group A. There was no evidence of a  
18 connection between Mr. Wondie and Group A or that Mr. Wondie was involved with a gang. Mr.  
19 Wondie is African American.  
20

21 4.25 Detective Decker concluded that Mr. Wondie was pictured in a Group A social  
22 media post from September 29, 2018 "holding what appears to be a semi-automatic firearm."  
23 Detective Decker had access to multiple photos of Mr. Wondie. Based on her individual review  
24 of these photos, and a comparison with a photo from a Group A social media post, she identified  
25 a person in the Group A photo as Mr. Wondie. She submitted the photo with her affidavit  
26 indicating Mr. Wondie was the man holding the firearm in the photo. Detective Decker presented  
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1 information in her affidavit that Group A was potentially associated with the murder of Ms. Riley.  
2 Mr. Wondie is not the man in the photo. Detective Decker failed to indicate that despite checking  
3 with law enforcement agents familiar with gangs, nobody had heard of Mr. Wondie.

4 **Detective Decker falsely testified Mr. Wondie had a propensity for violence.**

5 4.26 In her affidavit, Detective Decker testified Mr. Wondie had a propensity for  
6 violence.

7 4.27 Detective Decker had no evidence to support her claim that Mr. Wondie had a  
8 propensity for violence.

9 10 **Detective Decker presented false information under oath that formed the factual basis for**  
**the warrant issued by a King County Superior Court Judge.**

11 12 4.28 Detective Decker presented her search warrant affidavit to a King County Superior  
13 Court Judge swearing under oath that: (1) Forensic examination has established that shell casings  
14 recovered from the scene matched a gun known to be owned by Gizachew Wondie; (2) Mr.  
15 Wondie had a propensity for violence; and (3) Mr. Wondie was the individual pictured in a social  
16 media post of a suspected gang that had potential involvement in the homicide and was holding a  
17 semi-automatic firearm.

18 20 4.29 All three sworn statements are demonstrably false and unsupported by any  
21 evidence. The judge issued the search warrant based on Detective Decker's false testimony.

22 **Defendants arrest Mr. Wondie without probable cause.**

23 24 4.30. On the morning of December 6, 2018, Mr. Wondie arrived in his vehicle at Seattle  
25 Central Community College where he studied computer science.

26 27 4.31. After parking his vehicle, Mr. Wondie was surrounded by SWAT and MCUTF  
28 officers with their firearms drawn. The officers banged on the window of the vehicle, told Mr.  
29

1 Wondie to show his hands and to get out of the car. Mr. Wondie cooperated and was removed  
2 from the vehicle. KCSO Deputy George Alvarez was the lead officer of the SWAT team. He has  
3 since been terminated as a KCSO Deputy.

4 4.32 Mr. Alvarez indicated he saw illegal narcotics on Mr. Wondie's person. Mr.  
5 Wondie's car was searched and Mr. Wondie was arrested for drug possession.  
6

7 4.33 Detective Decker was on scene and transported Mr. Wondie to the King County  
8 Administration Building in her law enforcement vehicle with MCU Detective John Free..  
9

10 4.34 In order to receive SWAT assistance to execute the warrant, Detective Decker  
11 prepared and signed a checklist that contained questions she needed to answer. In response to a  
12 question of whether she believed Mr. Wondie or his associates were likely to have assaultive  
13 behavior, Detective Decker answered "No." In response to a question of whether she believed Mr.  
14 Wondie to be violent, she answered "No." Detective Decker answered these questions prior to  
15 submitting her affidavit in support of the search warrant in which she stated Mr. Wondie had a  
16 propensity for violence.  
17

18 4.35 At no time during their initial contact with Mr. Wondie did SWAT or Detective  
19 Decker have probable cause to arrest him.  
20

21 4.36 The search warrant did not authorize the arrest of Mr. Wondie.  
22

23 4.37 Deputy Alvarez found drugs on Mr. Wondie's person after he was seized pursuant  
24 to service of the warrant.  
25

26 4.38 Absent the search warrant, Defendants had no basis to remove Mr. Wondie from  
27 his car.  
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1           4.39 Any evidence of narcotics on alleged to have been seen by Defendants on Mr.  
2 Wondie's person or in his car was not observed until after Mr. Wondie was seized.

3           4.40 Mr. Wondie was questioned by Detective Decker and Detective Free after his arrest  
4 during. Detective Decker's search warrant was executed after Mr. Wondie's arrest. The gun was  
5 not located pursuant to the search, nor was any evidence connecting Mr. Wondie to Ms. Riley's  
6 murder.

7           4.41 Additional search warrants were sought and approved based on information  
8 acquired after Mr. Wondie's seizure. The warrants only related to drugs and had nothing to do  
9 with the murder investigation. Detective Decker never found any evidence connecting Mr. Wondie  
10 to Ms. Riley's murder.

11           **The U.S. Attorney ("Government") indicted Mr. Wondie on federal drug and gun charges.**

12           4.42 On December 19, 2018, Mr. Wondie was indicted in the District Court of the  
13 Western District of Washington under cause number CR 18-315 RAJ on federal drug and gun  
14 charges. He was arraigned on January 3, 2019. Mr. Wondie pled not guilty to all the charges. In  
15 the Complaint, the Government alleged that KCSO investigated Mr. Wondie "for a homicide" and  
16 that KCSO believed that Mr. Wondie "was in possession of the murder weapon."

17           4.43 On January 20, 2021, Mr. Wondie filed a motion to suppress based on his unlawful  
18 arrest. The motion was filed under seal due to a protective order in place governing the  
19 dissemination of evidence in the case.

20           4.44 On January 20, 2021, Mr. Wondie filed a motion for a *Franks* Hearing based on  
21 Detective Decker's testimony to the judge from whom she sought the warrant. The motion was  
22

1 filed under seal due to a protective order in place governing the dissemination of evidence in the  
2 case.

3 4.45 Testimony for both motions was heard over four days on June 7, 2021, June 8,  
4 2021, June 21, 2021, and June 22, 2022. Detective Decker testified on June 21, 2021.

5 4.46 On July 2, 2021, the Court entered an Order under seal in the criminal matter (DKT  
6 #314) entitled “Order on Defendant’s *Franks* Motion as to Gizachew Wondie.” *See* Appendix B,  
7 incorporated by reference.

8 4.47 On August 9, 2021, the Court entered an Order under seal in the criminal matter  
9 (DKT #321) entitled “Order Granting Sealed Motion to Suppress Evidence of Warrantless Search  
10 as to Gizachew Wondie.” *See* Appendix C, incorporated by reference.

11 4.48 On August 13, 2021, the Court entered an Order dismissing the indictment with  
12 prejudice. Mr. Wondie was subjected to nearly three years of federal prosecution and spent most  
13 of that time under house arrest unable to work or attend school.

14 4.49 On September 16, 2021, Mr. Wondie filed a motion to unseal the Court’s orders.  
15 The Government opposed the motion. On December 2, 2021, the Court granted in part Mr.  
16 Wondie’s motion to unseal. The Court’s Order granting Mr. Wondie’s *Franks* Motion, issued on  
17 July 2, 2021, read in pertinent part:

18 In total, Detective Decker conveyed to Judge Richardson false identification of the  
19 defendant with a firearm, characterization of him as having a tendency to be violent, and  
20 having possession of a firearm conclusively linked to a homicide. The Court concludes  
21 Detective Decker’s noted statements in the affidavit can only be reasonably construed as  
22 reckless conduct, if not intentional acts. This is particularly so for a 33-year veteran  
23 detective working in Major Crimes, investigating homicide, robbery, and felony assault  
24 cases. Detective Decker was seeking a search warrant for evidence of the crime of  
25 Murder in the First Degree. Her attention to accuracy and truth should have been  
26 paramount, but that was not the case in the affidavit she submitted.

27 As noted above, an officer presenting a search warrant application has a duty to  
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1 produce, in good faith, all relevant information to the reviewing judge. Detective Decker  
2 recklessly provided false information and omitted information from the affidavit that  
3 resulted in misleading information being communicated to Judge Richardson.

4 The Court concludes that by removing the falsehoods concerning the firearms  
5 evidence, misidentification of the Instagram photograph, misrepresentations about the  
6 defendant's tendency to violence, and the other omissions above, the warrant fails for  
7 lack of probable cause. The Court therefore GRANTS the defendant's motion.

8 *See Appendix B.*

9 4.50 As a matter of law, it has been decided Mr. Wondie was unlawfully arrested by the  
10 defendants. Defendants had a full and fair opportunity to litigate the issues related to the  
11 lawfulness of Mr. Wondie's arrest.

12 4.51 As a matter of law, it has been decided that Detective Decker, as the affiant of the  
13 search warrant executed upon Mr. Wondie, knowingly and intentionally, or with reckless disregard  
14 for the truth, included multiple false statements in her warrant affidavit; and the false statements  
15 were necessary to a finding of probable cause. Defendants had a full and fair opportunity to litigate  
16 the issues related to the *Franks* Motion.

17 4.52 Neither Detective Decker nor Detective Alvarez were disciplined for their  
18 involvement in Mr. Wondie's case and King County took no corrective action as a consequence  
19 of their involvement with Mr. Wondie.

20 **Detective Decker testified at the *Franks* Hearing.**

21 4.53 Detective Decker testified at the *Franks* hearing that she knew that she needed to  
22 submit her NIBIN lead to the WSP Lab for verification to use the evidence, but indicated she  
23 thought that requirement only applied to cases going to trial.

24 4.54 Detective Decker testified in her affidavit that "Forensic examination has  
25 established that shell casings recovered from the scene matched a gun known to be owned by  
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1 Gizachew Wondie.” At the motion hearing, Detective Decker testified this statement was  
2 incorrect.

3       4.55 At the motion hearing, Detective Decker initially testified she had a “mixed  
4 understanding” of NIBIN protocols. This conflicted with her own previous actions that  
5 demonstrated she knew she needed additional WSP lab testing to testify that a match existed, even  
6 for purposes of a warrant application. For example, when she authored an email in 2017, before  
7 the Wondie search warrant application, she noted: “We are interested in linking the shell casings  
8 from the scene to the pistol and then the pistol to any other unsolved shootings.” She clearly knew  
9 forensic testing was necessary for a match before providing such information to a judge to get a  
10 warrant. After equivocating at the motion, she admitted that her statement about the ballistics  
11 match was not true. There was no justification for her to submit false information to the judge  
12 indicating the existence of a qualified ballistics match.

13       4.56 Detective Decker testified at the motion hearing that witnesses are less accurate at  
14 identifying people of a different race than their own. She also testified that she had access to a  
15 gang identification database known as GETEM which she could have sent a blast out to asking if  
16 Mr. Wondie was the person pictured in the Group A picture. She did not use the resource.

17       4.57 A defense investigator for Mr. Wondie testified he reviewed the photo found in the  
18 Group A post and concluded within 90 minutes of research the person pictured in the Group A  
19 photo was 100 percent not Mr. Wondie and instead 100 percent another individual he had identified  
20 from other social media and news publications.

1           4.58 During her testimony at the motion hearing, Detective Decker was unable to present  
2 any factual basis to support this allegation or to reconcile her previous answer made in the request  
3 for SWAT that she did not believe Mr. Wondie was violent.

4           4.59 Detective Decker testified at the motion hearing that she did not have probable  
5 cause to arrest Mr. Wondie.  
6

7 **King County knew other KCSO detectives had provided false testimony in sworn affidavits  
but did not discipline the officers.**

8           4.60 King County detectives have previously been sued under 42 U.S.C for violating a  
9 citizen's rights under the Fourth Amendment on a theory of judicial deception.  
10

11           4.61 In *Wheeler v. Broggi*, C19-1410-JCC-MAT (Western District of Washington),  
12 Rodney Wheeler sued King County Detectives Eleanor Broggi and Matthew Olmstead for making  
13 false statements and omitting important facts that would have undermined allegations against him.  
14

15           4.62 Mr. Wheeler contended that the detectives ignored evidence not aligning with their  
16 theory of the case and that they withheld exculpatory evidence.  
17

18           4.63 Mr. Wheeler, also an African-American male, experienced two years of pre-trial  
19 detention for a murder charge and unlawful firearm possession charge. He was acquitted by a jury.  
20

21           4.64 Mr. Wheeler alleged King County was liable under a ratification theory for  
22 condoning and ratifying the behavior of the dishonest detectives.  
23

24           4.65 Neither Detective Broggi nor Detective Olmstead were disciplined for their  
25 involvement with the investigation of Mr. Wheeler.  
26

27           4.66 On or about April 15, 2021, Defendant King County agreed to pay \$500,000.00 to  
28 settle Mr. Wheeler's claims. The settlement came within a month after U.S. Magistrate Judge Mary  
29 Alice Theiler found there was evidence to support Mr. Wheeler's claims of malicious prosecution,  
30

1 violation of his due process and “judicial deception,” stemming from allegations the detectives  
2 filed misleading or incomplete sworn statements to obtain a search warrant and, later, criminal  
3 charges against Wheeler. *See Appendix D* incorporated by reference. The settlement was reached  
4 before the Court issued its order granting Mr. Wondie’s *Franks* Motion on July 2, 2021.  
5

6 4.67 When Detective Decker was found as a matter of law to have acted recklessly, if  
7 not intentionally, for presenting false testimony to obtain a search warrant, King County had  
8 already settled the claims against detectives Broggi and Olmstead for judicial deception. Despite  
9 this pattern of misconduct, King County officials took no steps to reprimand or discharge the  
10 involved detectives. King County has widespread practice or custom where acquiring warrants  
11 through judicial deception remains an acceptable practice within the King County Sheriff’s  
12 Department.  
13

14 4.68 Detective Decker also facilitated Mr. Wondie’s arrest with the help of the King  
15 County Swat Team and Deputy Alvarez when there was no probable cause to arrest him. The fact  
16 that this arrest was done without question or sanction from King County demonstrates that it is an  
17 acceptable practice within the King County Sheriff’s Department to use the SWAT team to make  
18 unlawful arrest and intimidate citizens.  
19

20 **Detective Decker testified at her deposition that it was custom and policy within KCSO to  
21 use NIBIN leads to establish conclusive forensic matches for purposes of probable cause.**

22 4.69 At her deposition on December 15, 2022, Detective Decker testified that it was a  
23 common practice for KCSO detectives to use NIBIN leads as evidence of a conclusive forensic  
24 match even though no microscopic confirmation had been completed.  
25

1           4.70 Detective Decker testified that it was common practice for NIBIN leads to be used  
2 for probable cause by KCSO detectives in search warrant affidavits without requesting or receiving  
3 microscopic confirmation.

4           4.71 Detective Decker testified that as a result of the Wondie criminal case and Judge  
5 Jones' *Franks Order*, a change was effectuated within the KCSO. After the *Franks Order*, she  
6 testified that "detectives were now on alert and going to be very careful with how they move  
7 forward with NIBIN evidence."

8           4.72 Detective Decker testified that due to Judge Jones *Franks Order*, "detectives were  
9 now on guard and wanted to make sure that that did not happen to them, what had happened to  
10 me," regarding NIBIN evidence.

11           4.73 Detective Decker testified that KCSO detectives would utilize NIBIN leads as  
12 probable cause evidence in search warrant affidavits without seeking microscopic confirmation  
13 and did so until Judge Jones issued the *Franks Order*.

14           4.74 Detective Decker testified she believes Mr. Wondie still has "complicity" in Ms.  
15 Riley's murder. When questioned why she thought that Mr. Wondie still had complicity four years  
16 after the murder, King County objected on grounds of investigative privilege. As of the filing of  
17 this Second Amended Complaint, Plaintiff's counsel is attempting to compel Detective Decker to  
18 respond to the question. Detective Decker's deposition transcript is attached as Appendix E. The  
19 testimony regarding NIBIN evidence referenced in this Second Amended Complaint is found in  
20 pages 195 through 210. The testimony regarding Detective Decker's belief that Mr. Wondie has  
21 complicity in Ms. Riley's murder is found in pages 171-178.

1                   **Public Disclosure Request Seeking NIBIN evidence.**

2                   4.75 On August 22, 2022, Plaintiff's counsel requested through the KCSO Public  
3 Disclosure Unit "All search warrants prepared between January 1, 2017 and August 2, 2022 that  
4 reference "NIBIN" or National Integrated Ballistics Information Network."

5                   4.76 On January 6, 2023, KCSO responded:

6                   The KCSO Public Disclosure Unit has located the following records responsive to your  
7 request:

8                   Approximately 500 emails were reviewed and the 1 responsive email containing a warrant  
9 had been uploaded to the records center as installment 1. I anticipate providing the next installment  
10 of records to you by February 6, 2023. Thank you.

11                   4.77 The search warrant affidavit is attached as Appendix F. It states in pertinent part:  
12 "On 09/25/18 I spoke with SA Sam Gonzalez who works with the NIBIN system at the Washington  
13 State Patrol Crime Lab. SA Gonzalez told me that the 9mm shell casing recovered after the shooting  
14 of Maldonado's occupied vehicle and the 9mm shell casing later recovered at the shooting at  
15 Michael's house were a match in the IBIS system. This information shows that the gun fired in the  
16 drive-by shooting and the gun Patrick was seen firing at Michael's house were the same gun."

17                   4.78 On information and belief, the statement is demonstrably false absent microscopic  
18 confirmation.

19                   4.79 On information and belief, it is expected Mr. Gonzalez will testify that he would not  
20 confirm a "match" over the phone without performing a microscopic analysis and creating a report.

21                   4.80 On information and belief, this affidavit is evidence of KCSO's widespread practice  
22 of misrepresenting NIBIN evidence and corroborates Detective Decker's testimony that KCSO  
23 detectives committed judicial deception repeatedly by misrepresenting NIBIN leads as confirmed  
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1 matches to establish probable cause for search warrants.

2       **V. CAUSE OF ACTION – CLAIMS PURSUANT to 42 U.S.C. §1983 and**  
3       **§1988**

4       5.1      Paragraphs 1.1 through 4.80 are realleged as if fully set forth herein.

5       5.2      At all material times hereto, all Defendants were acting under color of state law.

6       At all material times hereto, Plaintiff had a constitutionally protected liberty interest in life,  
7       personal security, bodily integrity, being free from harmful physical contact or emotional injury,  
8       freedom to move or travel, and had constitutionally protected rights to equal protection, as well  
9       as to procedural and substantive due process of law as provided by the 4th and 14th Amendment  
10      to the Constitution of the United States.

12       5.3      The acts and omissions of the Defendant King County, by and through their  
13      agents and representatives identified above constitute a pervasive pattern of recklessness,  
14      deliberate indifference, gross negligence and/or wanton/willful misconduct in regard to the  
15      rights of Plaintiff.

17       5.4      The individual defendants named above acted in a manner that deprived Plaintiff  
18      of constitutionally protected liberty interests in life, personal security, bodily integrity,  
19      movement, travel and deprived Plaintiff of equal protection and procedural and substantive due  
20      process of law. Said individual defendants further acted in a manner that was deliberately  
21      indifferent, wanton and willful and which reflected a reckless disregard for Plaintiff's well-being.

23       5.5      The Plaintiff was unlawfully seized without probable cause by the defendants.

25       5.6      The Plaintiff was subjected to an unlawful search and seizure based on the judicial  
26      deception of Detective Decker.

1       5.7 Plaintiff was injured by the unconstitutional policies, customs and procedures  
2 implemented and followed by the King County Sheriff's Department in violation of his civil rights  
3 as provided by the 4<sup>th</sup> and 14th Amendments to the Constitution of the United States and King  
4 County is liable under 42 U.S.C. § 1983 and§ 1988.

5       5.8 Defendants King County and King County Sheriff's Department knowingly,  
6 recklessly, or with deliberate indifference and callous disregard of Plaintiffs rights, failed to  
7 instruct, supervise, train, control and/or discipline on a continuing basis Defendant officers and  
8 other officers in their duty.

9       5.9 Defendant King County ratified the action of Detective Decker because it failed to  
10 discipline her after a federal district court judge ruled that she acted recklessly, if not intentionally,  
11 when providing false testimony to the court in support of a search warrant. She is at least the third  
12 King County detective sued for judicial deception. Defendant King County recognized the alleged  
13 wrongdoing of Detectives Broggi and Olmstead by paying a \$500,000.00 settlement to resolve  
14 claims against them less than a month after a Magistrate Judge recommended that there were  
15 sufficient facts alleged in the Plaintiff's Complaint to support a claim of judicial deception.

16       5.10 Defendant King County's widespread acceptance of judicial deception through its  
17 failure to sanction or address such misconduct was the moving force behind Detective Decker's  
18 intentional decision to mislead a King County Superior Court judge by submitting false testimony  
19 related to ballistics evidence to establish probable cause. Absent ratification of judicial deception,  
20 Mr. Wondie would not have been deprived of his constitutional rights.

21       5.11 KCSO maintained a widespread practice of judicial deception by allowing and  
22 encouraging detectives to deviate from accepted NIBIN protocols in order to secure warrants that  
23  
24

1 would not otherwise be obtainable but for the deviation and misrepresentations that were permitted  
2 by widespread practice and internal training.

3       5.12 Detective Decker testified at the *Franks* Hearing that she had received training from  
4 Washington State Patrol about the appropriate use of NIBIN leads to establish probable cause. She  
5 testified, that she did not follow the training and instead represented that the firearm used in the  
6 Riley murder was conclusively linked to a gun belonging to Mr. Wondie. King County did not  
7 discipline her for her actions. If Washington State Patrol had trained Detective Decker trained  
8 regarding NIBIN evidence, King County failed to supervise, control and/or discipline its  
9 detectives, including Detective Decker, for not adhering to the training. Detective Decker testified  
10 that she thought that there was a different pretrial standard for using NIBIN evidence, when in fact  
11 she knew that was not the case, and King County did nothing to address this gross misconduct.  
12 King County did not train its detectives on proper NIBIN protocols. This establishes a ratification  
13 by King County of the misuse of NIBIN evidence.

14       5.13 As testified to by Detective Decker, it was “common practice” for detectives to use  
15 NIBIN leads as evidence of a forensic match between a bullet and a gun to establish probable cause  
16 in search warrants without requesting or receiving microscopic confirmation. This common  
17 practice did not allegedly change until after Judge Jones issued his *Franks* Order.

18       5.14 This widespread and common practice lasted for several years, and its detectives  
19 were trained, as demonstrated by Detective Decker’s testimony, to abide by it. King County  
20 ratified the misuse of NIBIN evidence.

21       5.15 Regardless of ratification, KCSO clearly had a widespread custom or practice of  
22 misusing NIBIN evidence in violation of Mr. Wondie’s rights as well as that of other citizens.  
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1           5.16. Detective Decker requested assistance from SWAT to execute the search warrant.  
2 The anticipated detainment turned into an arrest without probable cause. The arrest occurred  
3 outside of Seattle Community College during school hours and Mr. Wondie was contacted at  
4 gunpoint. There was never probable cause to arrest Mr. Wondie and there was no basis to believe  
5 he was violent or otherwise dangerous. Even assuming the search warrant had not been procured  
6 through judicial deception, there was no basis for King County Swat or Deputy Alvarez to arrest  
7 Mr. Wondie or for Mr. Wondie to be transported to a government office for questioning by  
8 Detective Decker. The fact that this arrest occurred without probable cause and without oversight  
9 from, or corrective action by, King County, demonstrates King County's ratification of the use of  
10 SWAT resources to scare individuals before unlawfully arresting them and coercing confessions.  
11 But for this policy inferred from the action of the Defendants in this case, Mr. Wondie would never  
12 been arrested at gunpoint by a SWAT team and coerced into disclosing evidence. Absent probable  
13 cause to arrest, the SWAT Team, George Alvarez, and Detective Decker worked in concert to take  
14 Mr. Wondie into custody at gunpoint, to unlawfully confine him, and to use the full force of  
15 governmental resources to compel him to talk.  
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18           5.17 Defendants King County and King County Sheriff's Department had the power to  
19 prevent the commission of the aforesaid wrongs, could have done so by reasonable diligence, but  
20 failed to do so with deliberate indifference and callous disregard of the rights of Plaintiff.  
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23           5.18 As a direct and proximate cause of defendants' violation of Plaintiffs rights,  
24 Plaintiff has suffered economic and emotional damages in amounts to be proven at trial.  
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27           5.19 Defendants' malicious, intentional and / or reckless disregard for Plaintiffs clearly  
28 established constitutional rights warrants an award of punitive damages.  
29

5.20 By reason of all the foregoing allegations, Plaintiff is entitled to an award of damages against the defendants, jointly and severally, for his injuries and damages including all general and special damages and including punitive damages under federal common law and 42 U.S.C. § 1983 and for their costs and reasonable attorney's fees pursuant to 42 U.S.C. § 1988.

## VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against the Defendants as follows:

- (a) For judgments in such amounts as shall be proven at the time of trial including general and specific damages.
- (b) For punitive damages;
- (b) For pre-judgment interest at the statutory rate on all items of special damages including, without limitation, expenses of medical care and treatment and wage loss.
- (c) For an award of attorney's fees and costs incurred herein.
- (d) For such other and further relief as the Court deems just and equitable.

Signed this 12<sup>th</sup> day of January, 2023

THE LAW OFFICE OF DAN N. FIORITO III  
Attorney for Plaintiff

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